



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P. [MD]No.20537 of 2021

K.Babu

... Petitioner

Vs.

1.The Commissioner of Police,
Madurai City,
Madurai.

2.The Assistant Commissioner of Police,
Prohibition Enforcement Wing,
Madurai City,
Madurai.

3.The Inspector of Police,
Prohibition Enforcement Wing,
Madurai City,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the third respondent herein to forthwith to release petitioner's Hero Honda Splendor Bike bearing Registration No.TN 59 AH 6835 from their custody on the basis of his representation dated 06.11.2021.

For Petitioner : Mr.K.Sathish Kumar

For Respondents : Mr.S.R.A.Ramachandran

Additional Government Pleader

O R D E R

Mr.K.Sathish Kumar, learned Counsel on record for writ petitioner is before this Court. Mr.S.R.A.Ramachandran, learned Additional Government Pleader accepts notice on behalf of all the three respondents.

2.With the consent of both sides, the captioned main writ petition is taken up and heard out.

3.There is no disputation or disagreement that in a similar matter another Hon'ble Single Judge has ordered release of the seized vehicle on certain terms. To be noted, this is a case of alleged violation of Sections 4(1)(a) and 4(1)(i) of the Tamil Nadu Prohibition Act, 1937.

4.In the light of there being no disputation or disagreement that this matter is similar to the case in which another Hon'ble



Single Judge has directed release of the vehicle by imposing certain conditions, it is not necessary to dilate further on facts. The order made by the other Hon'ble Judge with the consent of both sides is as follows:

'Heard the learned counsel on either side. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

2. The petition mentioned vehicle was seized in connection with Crime No.57 of 2020 registered on the file of the second respondent for the offence under Sections 4(1)(a) and 4(1)(i) of Tamil Nadu Prohibition Act. It is not in dispute that till now no confiscation order under Section 14 of the Tamil Nadu Prohibition Act has been passed. It is also not in dispute that the vehicle has not been produced before the jurisdictional Criminal Court.

3. In similar circumstances, this Court vide order dated 09.07.2020 in W.P.(MD)No.2679 of 2020 (Sathiah v. The State of Tamil Nadu and Others) has passed the following order:-

"Heard the learned counsel on either side.

2. The petition mentioned vehicle belongs to the petitioner herein. It appears that the said vehicle was involved in Crime No.231 of 2019, registered on the file of the third respondent under Tamil Nadu Prohibition Act, 1937. The petitioner's son Karthick was arrested and he was found in possession of 384 Brandy Bottles. The petitioner's son was said to have driven the said vehicle at the relevant point of time. The grievance of the petitioner is that the vehicle in question has not been produced before the Judicial Magistrate till date. His further apprehension is that even without complying the necessary procedures, the second respondent is likely to auction the vehicle, which necessitated the petitioner to file the present Writ Petition.

3. The learned counsel for the petitioner placed reliance on the order dated 06.06.2019 made in CrI.O.P.No.11945 of 2019, wherein the learned judge has observed as follows:-

11. The provisions of Section 49A of the Tamil Nadu Forest Act does not in any way take away the jurisdiction of the Magistrate Court to



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exercise its power under Section 451 or 457 of Cr.P.C. The confiscation of a vehicle involved in the commission of an offence under the Tamil Nadu Forest Act is not only punitive in nature but also a deterrent. When a vehicle is involved in the commission of offence under the Tamil Nadu Forest Act and there are prima facie materials to show that the owner of the vehicle did not have any knowledge or connivance in the commission of the offence, he can always file an application for return of vehicle under Section 451 or 457 of Cr.P.C. But, however the Court while exercising its powers will have to do it with care and caution and should provide an opportunity to the Public Prosecutor and also must keep in mind the spirit behind Section 49A of the Tamil Nadu Forest Act, 1882 and its benevolent object.

12. Even though, the Judgment cited by the learned counsel for the petitioner deals with the case under the Tamil Nadu Prohibition Act, the ratio in the said Judgment can be applied even in a case where confiscation proceedings have been initiated under the Tamil Nadu Forest Act.
13. In view of the above, the reason given by the Court below for returning the petition filed by the petitioner is unsustainable and the same is hereby set aside. The Court below is directed to consider the petitioner afresh by keeping in mind the judgment of the Hon'ble Division bench referred supra and after affording an opportunity to the prosecution. This exercise shall be completed by the Court below within a period of one month from the date of a receipt of copy of this order.

4. The learned Government counsel wanted to rely upon G.O.Ms.No.39 dated 22.10.2019, Home, Prohibition and Excise (VIII) Department to sustain his contention that the second respondent can very well auction the vehicle in question. But the said Government order will come into play after the confiscation is done under Section 14 of Tamil Nadu Prohibition Act 1937. In this case, there is nothing on record to show the fulfillment of formalities set out in Section 14(4) of the



Tamil Nadu Prohibition Act. Therefore, the question of auctioning the vehicle even without formal confiscation does not arise at all. Also, it does not mean that the vehicle involved in criminal case should not be produced before the Jurisdictional Court. In fact, the provisions of Criminal Procedure Code envisage that the seized vehicle should be produced before the Jurisdictional Court and the party concerned can avail the right to claim the vehicle by way of interim or final custody.

5. Therefore, I direct the respondents to produce the vehicle in question before the jurisdictional criminal Court without any further delay. Upon such production, it is open to the petitioner to apply for return under Section 451 of Cr.P.C. Of course, the authorities are at liberty to take action to confiscate the vehicle as per law.

6. In the above terms, the Writ Petition is allowed. No costs.'

4. The petitioner's counsel on instructions gives an undertaking that the petitioner will not alienate the petition mentioned vehicle till the confiscation proceedings are over. She also gives a further undertaking that the petitioner will also produce the vehicle as and when the respondents call for the vehicle for enquiry and cooperate with the enquiry to be conducted by the respondents.

5. I make it clear that it is very much open to the respondents herein to initiate and conclude the confiscation proceedings. The only relief that I am granting is interim custody of the vehicle. I have not gone into the merits of the matter.

6. Therefore, the respondents are directed to release the said vehicle subject to the following conditions:-

- a) The petitioner is directed to pay a sum of Rs.2,000/- (Rupees Two Thousand only) in favour of the Officer-in-Charge, High Court Legal Services Committee, Madurai Bench of Madras High Court, Madurai, S.B.A/c.No.496037387, IFSC : IDIB000H040, Indian Bank, High Court Branch, Madurai. It will be a non refundable payment.

The Registrar (Judicial) is directed to spend the



amount for appropriate welfare activities such as feeding the disadvantaged communities in Madurai District.

- b) The petitioner shall not alienate or encumber the vehicle in question till the proceedings are completed.
- c) petitioner shall produce all the documents pertaining to the ownership of the seized vehicle.
- d) and when the respondents call for the vehicle for enquiry, the petitioner has to produce the vehicle in question and he shall cooperate with the enquiry to be conducted by the respondents.

7. Upon completion of these formalities, the respondents shall release the vehicle forthwith without any delay. If this undertaking given by the petitioner is breached, the petitioner will not be entitled to interim release of the vehicle in future. The Writ Petition is allowed accordingly. There shall be no order as to costs.'+-

5. The conditions imposed and the release of the vehicle post compliance of the conditions have been set out by the Hon'ble Single Judge in paragraph Nos.5, 6 & 7.

6. Therefore, there shall be a similar order in the captioned matter. The order is as follows:

6.1. I make it clear that it is very much open to the respondents herein to initiate and conclude the confiscation proceedings. The only relief that I am granting is interim custody of the vehicle. I have not gone into the merits of the matter.

6.2. Therefore, the respondents are directed to release the said vehicle subject to the following conditions:

a) The petitioner is directed to pay a sum of Rs.2,000/- (Rupees Two Thousand only) to the credit of the Officer-in-Charge, High Court Legal Services Committee, Madurai Bench of Madras High Court, Madurai, S.B.A/c.No.496037387, IFSC : IDIB000H040, Indian Bank, High Court Branch, Madurai. It will be a non refundable payment. The Registrar (Judicial) is directed to spend the amount for appropriate welfare activities such as feeding the disadvantaged communities in Madurai District;

b) The petitioner shall not alienate or encumber the vehicle in question till the proceedings are completed;



c) The petitioner shall produce all documents pertaining to ownership of the seized vehicle;
and

d) when the respondents call for the vehicle for enquiry, the petitioner has to produce the vehicle in question and he shall cooperate with the enquiry to be conducted by the respondents.

6.3. Upon completion of these formalities, the respondents shall release the vehicle forthwith without any delay. If aforementioned undertaking given by the petitioner is breached, the petitioner will not be entitled to interim release of the vehicle in future.

7. Captioned Writ Petition is disposed of in aforesaid manner i.e., with aforementioned directive without any order as to costs.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar (CS)

MR

NOTE: *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To

1. The Commissioner of Police,
Madurai City,
Madurai.
2. The Assistant Commissioner of Police,
Prohibition Enforcement Wing,
Madurai City,
Madurai.
3. The Inspector of Police,
Prohibition Enforcement Wing,
Madurai City,
Madurai.



4.The Secretary,
Officer Incharge,
High Court Legal Services Committee,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K. SATHISHKUMAR, Advocate (SR-34854[F]
dated 17/11/2021)

+1 CC to M/s.SPL GP (SR-35198[F] dated 19/11/2021)

ORDER MADE IN
W.P.[MD]No.20537 of 2021
17.11.2021

KMV (CO)
GC(01.12.2021) 7P 7C